

Referral



> On Mar 2, 2018, at 6:18 AM, McHenry, James (EOIR) <James.McHenry@EOIR.USDOJ.GOV> wrote:

>

> FYI- Since the government is closed today we won't be able to post the decision until Monday.

Referral



From: [McHenry, James \(EOIR\)](#)  
To: [Hamilton, Gene \(OAG\)](#)  
Subject: Fwd: Matter of E-F-H-L-, 27 I&N Dec. 226 (A.G. 2018)  
Date: Monday, March 05, 2018 3:51:21 PM

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This is what was sent out.

Begin forwarded message:

**From:** "Ferris, Brittany (EOIR)" <[Brittany.Ferris@EOIR.USDOJ.GOV](mailto:Brittany.Ferris@EOIR.USDOJ.GOV)>  
**Date:** March 5, 2018 at 2:47:17 PM EST  
**To:** "All of Court Administrators (EOIR)"  
<[All\\_of\\_Court\\_Administrators@EOIR.USDOJ.GOV](mailto:All_of_Court_Administrators@EOIR.USDOJ.GOV)>, "All of Judges (EOIR)"  
<[All\\_of\\_Judges@EOIR.USDOJ.GOV](mailto:All_of_Judges@EOIR.USDOJ.GOV)>, "All of OCIJ HDQ (EOIR)"  
<[AllofOCIJHDQEOIR@EOIR.USDOJ.GOV](mailto:AllofOCIJHDQEOIR@EOIR.USDOJ.GOV)>, "All of OCIJ JLC (EOIR)"  
<[AllofOCIJLCEOIR@EOIR.USDOJ.GOV](mailto:AllofOCIJLCEOIR@EOIR.USDOJ.GOV)>, "BIA ATTORNEYS (EOIR)"  
<[BIA\\_ATTORNEYS@EOIR.USDOJ.GOV](mailto:BIA_ATTORNEYS@EOIR.USDOJ.GOV)>, "BIA BOARD MEMBERS (EOIR)"  
<[BIA\\_BOARD\\_MEMBERS@EOIR.USDOJ.GOV](mailto:BIA_BOARD_MEMBERS@EOIR.USDOJ.GOV)>, "EOIR Library (EOIR)"  
<[EOIR\\_Library@EOIR.USDOJ.GOV](mailto:EOIR_Library@EOIR.USDOJ.GOV)>, "BIA SUPPORT (EOIR)"  
<[BIA\\_SUPPORT@EOIR.USDOJ.GOV](mailto:BIA_SUPPORT@EOIR.USDOJ.GOV)>, "BIA TEAM P (EOIR)"  
<[BIA\\_TEAM\\_P@EOIR.USDOJ.GOV](mailto:BIA_TEAM_P@EOIR.USDOJ.GOV)>, "Butler, Vicki A. (EOIR)"  
<[Vicki.Butler@EOIR.USDOJ.GOV](mailto:Vicki.Butler@EOIR.USDOJ.GOV)>, "Carr, Donna (EOIR)"  
<[Donna.Carr@EOIR.USDOJ.GOV](mailto:Donna.Carr@EOIR.USDOJ.GOV)>, "King, Jean (EOIR)"  
<[Jean.King@EOIR.USDOJ.GOV](mailto:Jean.King@EOIR.USDOJ.GOV)>, "OGC (EOIR)"  
<[OGC@EOIR.USDOJ.GOV](mailto:OGC@EOIR.USDOJ.GOV)>, "McHenry, James (EOIR)"  
<[James.McHenry@EOIR.USDOJ.GOV](mailto:James.McHenry@EOIR.USDOJ.GOV)>, "Reilly, Katherine - OGC (EOIR)"  
<[Katherine.Reilly@EOIR.USDOJ.GOV](mailto:Katherine.Reilly@EOIR.USDOJ.GOV)>, "Santoro, Christopher A (EOIR)"  
<[Christopher.Santoro@EOIR.USDOJ.GOV](mailto:Christopher.Santoro@EOIR.USDOJ.GOV)>, "Alder Reid, Lauren (EOIR)"  
<[Lauren.AlderReid@EOIR.USDOJ.GOV](mailto:Lauren.AlderReid@EOIR.USDOJ.GOV)>, "Berkeley, Nathan (EOIR)"  
<[Nathan.Berkeley@EOIR.USDOJ.GOV](mailto:Nathan.Berkeley@EOIR.USDOJ.GOV)>, "Cowles, Jon (EOIR)"  
<[Jon.Cowles@EOIR.USDOJ.GOV](mailto:Jon.Cowles@EOIR.USDOJ.GOV)>, "Bauder, Melissa (EOIR)"  
<[Melissa.Bauder@EOIR.USDOJ.GOV](mailto:Melissa.Bauder@EOIR.USDOJ.GOV)>, "Korniluk, Artur (EOIR)"  
<[Artur.Korniluk@EOIR.USDOJ.GOV](mailto:Artur.Korniluk@EOIR.USDOJ.GOV)>, "Adams, Amanda (EOIR)"  
<[Amanda.Adams@EOIR.USDOJ.GOV](mailto:Amanda.Adams@EOIR.USDOJ.GOV)>, "Pease, Jeffrey (EOIR)"  
<[Jeffrey.Pease@EOIR.USDOJ.GOV](mailto:Jeffrey.Pease@EOIR.USDOJ.GOV)>  
**Cc:** "Rose, Karen (EOIR)" <[Karen.Rose@EOIR.USDOJ.GOV](mailto:Karen.Rose@EOIR.USDOJ.GOV)>, "Atkinson, Pamela (EOIR)" <[Pamela.Atkinson@EOIR.USDOJ.GOV](mailto:Pamela.Atkinson@EOIR.USDOJ.GOV)>  
**Subject:** Matter of E-F-H-L-, 27 I&N Dec. 226 (A.G. 2018)

The above precedent decision can be found in Volume 27 at page 226. The link to the decision is:

Intranet:

**EOIR (b)(7)(E)**

The Attorney General referred the decision of the Board of Immigration Appeals in *Matter of E-F-H-L-*, 26 I&N Dec. 319 (BIA 2014), to himself for review and vacated that

decision.

*Brittany R. Ferris*

DOJ/EOIR/BIA

703.605.5265

From: McHenry, James (EOIR)  
To: [Hamilton, Gene \(OAG\)](#)  
Subject: RE: AG Order: Matter of E-F-H-L-  
Date: Monday, March 05, 2018 10:25:00 AM

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Got it-I'm extracting the PDF now.

Referral



**From:** McHenry, James (EOIR)  
**To:** [Reilly, Katherine - OGC \(EOIR\)](#); [Neal, David L. \(EOIR\)](#); [King, Jean \(EOIR\)](#); [Santoro, Christopher A \(EOIR\)](#); [Berkeley, Nathan \(EOIR\)](#); [Ward, Lisa \(EOIR\)](#); [Sheehey, Kate \(EOIR\)](#)  
**Subject:** Matter of E-F-H-L-  
**Date:** Monday, March 05, 2018 10:36:00 AM  
**Attachments:** [AG Order 4122-2018.pdf](#)

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The AG has certified the case to himself in Matter of E-F-H-L- , vacated the Board's decision at 26 I&N Dec. 319, and directed that the case be recalendared.  
The order is attached.

Pending the resolution of any current IT issues:

--The Board should send out notice of the order to the parties today.

--The Board and OP should coordinate formatting the order as a published decision.

-- OP should have the published decision posted to the public VLL today and then distributed within EOIR. It should also annotate the first Matter of E-F-H-L- in the public VLL to reflect that it has been vacated.

--Any media inquiries to OP/CLAD should be referred to OPA.

--Admin: once the order is posted on the public VLL, you can give JMD a heads-up.

Thanks.



Office of the Attorney General  
Washington, D.C. 20530

ORDER NO. 4122-2018

In re: Matter of E-F-H-L- (EOIR (b)(6)) (BIA 2014)

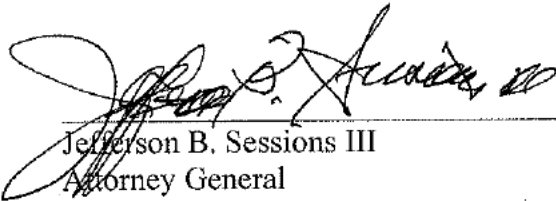
IN REMOVAL PROCEEDINGS

Pursuant to 8 C.F.R. § 1003.1(h)(1)(i), I direct the Board of Immigration Appeals ("Board") to refer to me its decision in *Matter of E-F-H-L-*, 26 I&N Dec. 319 (BIA 2014), and I vacate that decision.

In this matter, the respondent conceded removability at the outset of removal proceedings and requested relief from removal pursuant to an application for asylum and withholding of removal. The presiding Immigration Judge determined, without holding an evidentiary hearing, that the respondent's application failed as a matter of law to make a prima facie case that he was eligible for asylum and withholding of removal, and denied the application. The respondent appealed on the merits to the Board. The Board remanded, holding that a respondent applying for asylum and withholding of removal was ordinarily entitled to a full evidentiary hearing. The respondent subsequently withdrew his application for asylum and withholding of removal with prejudice. On the parties' motion, the Immigration Judge administratively closed removal proceedings to allow the adjudication of an I-130 petition on behalf of the respondent.

Because the application for relief which served as the predicate for the evidentiary hearing required by the Board has been withdrawn with prejudice, the Board's decision is effectively mooted. I accordingly vacate the decision of the Board in this matter, and I also direct that this matter be recalendared and restored to the active docket of the Immigration Court.

3-1-18  
Date

  
Jefferson B. Sessions III  
Attorney General

**From:** [Santoro, Christopher A \(EOIR\)](#)  
**To:** [McHenry, James \(EOIR\)](#)  
**Subject:** RE: Matter of E-F-H-L-  
**Date:** Monday, March 05, 2018 10:39:33 AM

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Received.

**Christopher A. Santoro**

Assistant Director for Policy (acting)

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**From:** McHenry, James (EOIR)

**Sent:** Monday, March 05, 2018 10:37 AM

**To:** Reilly, Katherine - OGC (EOIR) <Katherine.Reilly@EOIR.USDOJ.GOV>; Neal, David L. (EOIR) <David.Neal@EOIR.USDOJ.GOV>; King, Jean (EOIR) <Jean.King@EOIR.USDOJ.GOV>; Santoro, Christopher A (EOIR) <Christopher.Santoro@EOIR.USDOJ.GOV>; Berkeley, Nathan (EOIR) <Nathan.Berkeley@EOIR.USDOJ.GOV>; Ward, Lisa (EOIR) <Lisa.Ward@EOIR.USDOJ.GOV>; Sheehey, Kate (EOIR) <Kate.Sheehey@EOIR.USDOJ.GOV>

**Subject:** Matter of E-F-H-L-

EOIR Duplicate



Thanks.

Referral



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**From:** McHenry, James (EOIR)  
**Sent:** Monday, March 5, 2018 10:38 AM  
**To:** O'Malley, Devin (OPA) <domalley@jmd.usdoj.gov>  
**Subject:** FW: Matter of E-F-H-L-

FYI-the attached (scrubbed of the A-number and in our particular format) will go up on our website today.





Office of the Attorney General  
Washington, D.C. 20530

ORDER NO. 4122-2018

In re: Matter of E-F-H-L- (A EOIR (b)(6)) (BIA 2014)

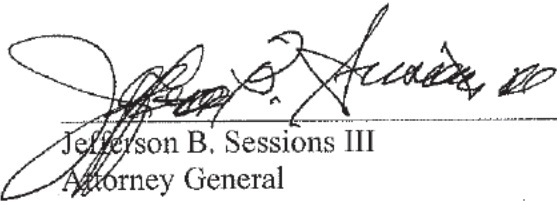
IN REMOVAL PROCEEDINGS

Pursuant to 8 C.F.R. § 1003.1(h)(1)(i), I direct the Board of Immigration Appeals ("Board") to refer to me its decision in *Matter of E-F-H-L-*, 26 I&N Dec. 319 (BIA 2014), and I vacate that decision.

In this matter, the respondent conceded removability at the outset of removal proceedings and requested relief from removal pursuant to an application for asylum and withholding of removal. The presiding Immigration Judge determined, without holding an evidentiary hearing, that the respondent's application failed as a matter of law to make a prima facie case that he was eligible for asylum and withholding of removal, and denied the application. The respondent appealed on the merits to the Board. The Board remanded, holding that a respondent applying for asylum and withholding of removal was ordinarily entitled to a full evidentiary hearing. The respondent subsequently withdrew his application for asylum and withholding of removal with prejudice. On the parties' motion, the Immigration Judge administratively closed removal proceedings to allow the adjudication of an I-130 petition on behalf of the respondent.

Because the application for relief which served as the predicate for the evidentiary hearing required by the Board has been withdrawn with prejudice, the Board's decision is effectively mooted. I accordingly vacate the decision of the Board in this matter, and I also direct that this matter be recalendared and restored to the active docket of the Immigration Court.

3-1-18  
Date

  
Jefferson B. Sessions III  
Attorney General

**From:** [Santoro, Christopher A \(EOIR\)](#)  
**To:** [McHenry, James \(EOIR\)](#)  
**Subject:** FW: Questions about Sessions use of self-certification in Matter of EFHL  
**Date:** Thursday, March 08, 2018 10:25:44 AM

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FYI

**Christopher A. Santoro**

Assistant Director for Policy (acting)

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**From:** Berkeley, Nathan (EOIR)  
**Sent:** Thursday, March 08, 2018 10:11 AM  
**To:** Santoro, Christopher A (EOIR) <Christopher.Santoro@EOIR.USDOJ.GOV>  
**Subject:** FW: Questions about Sessions use of self-certification in Matter of EFHL

FYSA

Referral

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Referral

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**From:** McHenry, James (EOIR)  
**To:** [Pickell, Lindsay A. \(OLA\)](#)  
**Subject:** FW: Questions about Sessions use of self-certification in Matter of EFHL  
**Date:** Thursday, March 08, 2018 11:39:00 AM

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Lindsay,

Nathan forwarded me your inquiry.

I think there is some confusion on the part of Senator Feinstein's office about the procedural posture of the decision.

The original E-F-H-L- decision in 2014 ended up being an interlocutory decision, and there has never been a final administrative decision in the case. The case has been pending with EOIR since 2011 and remains pending.

The AG's decision this week was in the same case as the prior decision—that is why it is also captioned Matter of E-F-H-L-. He simply vacated an earlier interlocutory decision in the same pending case; he did not reach back and vacate a final decision.

The effect of the decision on other cases will depend on the facts and circumstances of the other cases. There are roughly 670,000 cases pending, and there is no way to specify the impact on each case.

I don't think EOIR (b)(7)(E)  
, recent examples are available:

In 2009, AG Holder vacated a decision by AG Mukasey earlier in 2009 in Matter of COMPEAN, BANGALY & J-E-C-, 25 I&N Dec. 1 (A.G. 2009)

In 2015, AG Holder vacated a decision by AG Mukasey in 2008 in Matter of SILVA-TREVINO, 26 I&N Dec. 550 (A.G. 2015)

Let me know if you need any additional information.

Thanks.

James

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**From:** Pickell, Lindsay A. (OLA)  
**Sent:** Thursday, March 08, 2018 9:44 AM  
**To:** Berkeley, Nathan (EOIR) <[Nathan.Berkeley@EOIR.USDOJ.GOV](mailto:Nathan.Berkeley@EOIR.USDOJ.GOV)>  
**Subject:** FW: Questions about Sessions use of self-certification in Matter of EFHL

Hi Nathan – Does EOIR know about the below decision? This is an inquiry from Senator Feinstein so it is a high priority for us.

Best,  
Lindsay

Referral

